

Invalidity and Ineffectiveness of Legal Action in Insolvency Proceedings

Abstract

The subject of this thesis is a comprehensive analysis of the institute of invalidity of legal actions and ineffectiveness of legal actions and the incorporation of these concepts in contemporary legal theory and practice.

The legislation protects the rights of recipients of the law and the public interest by identifying the legal actions which contradict the principles of morality or (and?) the law, as absolutely or relatively invalid, if the meaning and the purpose of the Act so require. Legal actions are also considered invalid if those actions undertake to the fulfilment of something impossible and in certain cases also if those actions are not made in the required form or if they are an error.

The current legislation also protects creditors from the behaviour of debtors, if they intentionally shorten their creditors, through an institution called the relative ineffectiveness of legal action. The purpose is to protect creditors, guarantors and other persons against this shortening legal actions made by debtors. Such conduct of the debtor is formally not problematic, but it damages creditors, who therefore have the right to demand that the court determines such action is ineffective (only) against them.

The author's intention was to analyse the current legal regulation of the invalidity of legal action and the relative ineffectiveness of legal action. To bring it closer to the reader and to identify the problems that the current legal regulation contains and to propose a solution for regulation of these two institutes from the point of view of insolvency law.

The analysis of the current legal regulation of these institutes is based on the linguistic, logical and teleological interpretation of legal norms and critical analysis of the unifying interpretative practice of higher courts.

In the second half of the thesis, after a part devoted to the description of the current situation, the author offers a *de lege ferenda* consideration, to which he arrives by reflecting on the weaknesses of current legislation and offers solutions to achieve greater protection of creditors, guarantors and other persons of the debtor, enforceability of their rights, as well as increasing legal certainty for these persons. In conclusion, the author formulates a paragraphed wording of the Amending Act, including an explanatory memorandum with regard to his reasoning.